

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

WILLIE J. SMITH, JR.,

Petitioner,

vs.

DAVID NEVEN, et al.,

Respondents.

Case No. 2:05-CV-00191-PMP-(GWF)

ORDER

Petitioner has submitted an Application Requesting a Certificate of Appealability (#33). To appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.

Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th Cir. 2000).

Petitioner’s sole remaining ground for relief was that insufficient evidence existed to support a verdict of guilty for possession of rock cocaine, a controlled substance. The Court reviewed all the evidence that the state presented to the jury. Order (#30), p. 3. The Court then noted that when Petitioner raised this issue in his direct appeal, the Nevada Supreme Court held that sufficient evidence existed for the jury to determine that Petitioner had actual or constructive

1 possession of the rock cocaine, and that it was up to the jury to determine questions of credibility.
2 Id., p. 4. The Court then determined pursuant to 28 U.S.C. § 2254(d) that the Nevada Supreme
3 Court's ruling was a reasonable application of Jackson v. Virginia, 443 U.S. 307 (1979).
4 Reasonable jurists would not find this conclusion to be debatable.

5 Petitioner also incorrectly argues that the Court failed to consider that there were two
6 distinct acts of possession, namely, the rock cocaine that he was grinding into the pavement while
7 sitting handcuffed on the curb of a street and the rock cocaine that he had hidden between his
8 buttocks. This was the issue in Ground One of the Amended Petition (#8). The Court dismissed
9 that ground because the discovery of part of Petitioner's rock cocaine on the street and the discovery
10 of the remaining part of Petitioner's rock cocaine after a strip-search in the police station did not
11 create two separate acts of possession. Order (#9), p. 2 (citing Nev. Rev. Stat. § 453.336(1)).
12 Reasonable jurists would not find this conclusion to be debatable.

13 IT IS THEREFORE ORDERED that Petitioner's Application Requesting a
14 Certificate of Appealability (#33) is **DENIED**.

15
16 DATED: August 1, 2007.

17
18 

19 PHILIP M. PRO
20 United States District Judge
21
22
23
24
25
26
27
28